

**CITY OF SAMMAMISH
WASHINGTON
ORDINANCE NO. O2004-141**

**AN ORDINANCE OF THE CITY OF SAMMAMISH,
WASHINGTON, AMENDING ORDINANCE NO. O2004-135
TO REMOVE WIRELESS COMMUNICATIONS
FACILITIES FROM THE ORDINANCE'S LIST OF
CATEGORICAL EXEMPTIONS; AND PLACING A
MORATORIUM ON THE APPROVAL OF APPLICATIONS
FOR WIRELESS COMMUNICATIONS FACILITIES
WITHIN THE CORPORATE LIMITS OF THE CITY OF
SAMMAMISH.**

WHEREAS, the City Council has placed a moratorium on the filing of applications for development permits and approvals; and

WHEREAS, the current extension of that moratorium is under City of Sammamish Ordinance No. O2004-135; and

WHEREAS, Section 3 of Ordinance No. O2004-135 sets forth categorical exemptions to that moratorium, including wireless communications facilities under Section 3(i); and

WHEREAS, a public meeting was conducted on February 2, 2004 to receive comment upon the impacts and effectiveness of the current categorical exemptions for wireless communications facilities; and

WHEREAS, based upon the public testimony and other evidence presented at the February 2, 2004 public meeting, and upon additional materials presented by staff, the City Council finds that it is in the public interest to repeal the categorical exemptions for wireless communications facilities and to place a moratorium on approving applications for wireless communications facilities; and

WHEREAS, under RCW 35A.63.220 the City Council is authorized to adopt moratoriums; and

WHEREAS, upon adoption of the ordinance the Council will conduct a public hearing on the moratorium within 60 days of the adoption date, as per RCW 35A.63; and

WHEREAS, RCW 35.99.050 places certain conditions on such moratoriums;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAMMAMISH,
WASHINGTON, DO ORDAIN AS FOLLOWS:**

Section 1. Findings of Fact. The "Whereas" clauses above shall constitute findings of fact in support of the moratorium hereafter set forth and are incorporated herein.

Section 2. Ordinance No. O2004-135 Amended. City of Sammamish Ordinance No. O2004-135 is hereby amended by the repeal of Section 3(i).

Section 3. Moratorium Established. A moratorium is imposed upon the final approval of applications for wireless communications facilities, cellular facilities and development permits. This moratorium shall not affect vested rights established pursuant to previously filed and fully complete applications.

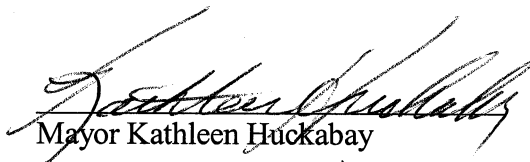
Section 4. Moratorium to be Administered in Keeping with FCC Guidelines for Facilities Siting Implementation. Pursuant to RCW 35.99.050, this moratorium shall be administered in a manner consistent with the guidelines for facilities siting implementation, as agreed to on August 5, 1998, by the Federal Communications Commission's Local and State Government Advisory Committee, the Cellular Telecommunications Industry Association, the Personal Communications Industry Association, and the American Mobile Telecommunications Association. A copy of which is attached hereto and incorporated by reference as Exhibit A. The City shall, at the request of a service provider impacted by the moratorium, participate with the service provider in the informal dispute resolution process included with the guidelines for facilities siting implementation.

Section 5. Effective Date. This Ordinance, as a public emergency ordinance necessary for the protection of the public health, public safety, public property, or public peace, shall take effect and be in full force immediately upon its adoption. Pursuant to Matson v. Clark County Board of Commissioners, 79 Wn. App. 641, 904 P.2d 317 (1995), underlying facts necessary to support this emergency declaration are included in the "WHEREAS" clauses, above, all of which are adopted by reference as findings of fact as if fully set forth herein.


Section 6. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

**ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON
THE 2nd DAY OF MARCH 2004.**

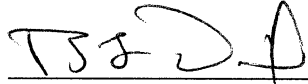
CITY OF SAMMAMISH


Mayor Kathleen Huckabay

ATTEST/AUTHENTICATED:


Melonie Anderson, City Clerk

Approved as to form:


Bruce L. Disend, City Attorney

Filed with the City Clerk:	February 25, 2004
Passed by the City Council:	March 2 nd , 2004
Date of Publication:	March 6, 2004
Effective Date:	March 2, 2004

EXHIBIT A

THE FOLLOWING GUIDELINES FOR FACILITIES SITING IMPLEMENTATION AND INFORMAL DISPUTE RESOLUTION PROCESS ARE AGREED TO BY THE FEDERAL COMMUNICATIONS COMMISSION'S LOCAL AND STATE GOVERNMENT ADVISORY COMMITTEE (LSGAC), THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION (CTIA), THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION (PCIA) AND THE AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION (AMTA). THE LSGAC IS A BODY OF ELECTED AND APPOINTED LOCAL AND STATE OFFICIALS, APPOINTED BY THE CHAIRMAN OF THE COMMISSION IN MARCH, 1997. A ROSTER OF LSGAC MEMBERS IS ATTACHED. CTIA, PCIA AND AMTA ARE TRADE ASSOCIATIONS REPRESENTING THE WIRELESS INDUSTRY.

I. GUIDELINES FOR FACILITY SITING IMPLEMENTATION

A. Local governments and the wireless industry should work cooperatively to facilitate the siting of wireless telecommunication facilities. Moratoria, where necessary, may be utilized when a local government needs time to review and possibly amend its land use regulations to adequately address issues relating to the siting of wireless telecommunications facilities in a manner that addresses local concerns, provides the public with access to wireless services for its safety, convenience and productivity, and complies with the Telecommunications Act of 1996.

B. If a moratorium is adopted, local governments and affected wireless service providers shall work together to expeditiously and effectively address issues leading to the lifting of the moratorium. Moratoria should be for a fixed (as opposed to open ended) period of time, with a specified termination date. The length of the moratorium should be that which is reasonably necessary for the local government to adequately address the issues described in Guideline A. In many cases, the issues that need to be addressed during a moratorium can be resolved within 180 days. All parties understand that cases may arise where the length of a moratorium may need to be longer than 180 days. Moratoria should not be used to stall or discourage the placement of wireless telecommunications facilities within a community, but should be used in a judicious and constructive manner.

C. During the time that a moratorium is in effect, the local government should, within the frame work of the organization's many other responsibilities, continue to accept and process applications (e.g., assigning docket numbers and other administrative aspects associated with the filing of applications), subject to ordinance provisions as may be revised during the moratorium. The local government should continue to work on the review and possible revisions to its land use regulations in order that the moratorium can terminate within its defined period of time, and that both local planning goals and the goals of the Telecommunications Act of 1996 with respect to wireless telecommunications services be met. Wireless service providers should assist by providing appropriate, relevant and non proprietary information requested by the local government for the purposes of siting wireless telecommunications facilities.

D. Local governments are encouraged to include both the community and the industry in the development of local plans concerning tower and antenna siting. Public notice and participation in accordance with the local government's standard practices should be followed.

II. INFORMAL DISPUTE RESOLUTION

A. The parties have agreed to an informal dispute resolution process for the wireless industry and local governments to utilize when moratoria may seem to be adversely affecting the siting of wireless telecommunications facilities. The purpose of the process is to expeditiously resolve disputes in a manner consistent with the interests of all parties.

B. The LSGAC will publicize and promote the moratoria guidelines reflected in Part I of this document and the availability of this informal dispute resolution process in a press release, and will also urge the national organizations working with the LSGAC to promote and publicize the guidelines and the dispute resolution process to their respective members. CTIA, PCIA and AMTA also will publicize and promote the guidelines and informal dispute resolution process utilizing their respective websites, and in subsequent forums and educational materials.

C. Local government experts in the area of land use siting of wireless telecommunications facilities in accordance with Section 704 of the Telecommunications Act, as well as industry representatives will be encouraged to serve as volunteers to assist in the resolution of problems relating to moratoria. The process will work as follows:

1. Two volunteers, one representing local government and one representing the wireless industry, shall be assigned to each case. Any company seeking to locate wireless telecommunications facilities, that felt it was being adversely impacted by a moratorium that does not comply with the guidelines described above, could contact the Wireless Telecommunications Bureau ("WTB") and ask for the name of a volunteer to review the matter. Any local government seeking advice on zoning moratoria issues may also contact the WTB for volunteers. The LSGAC will provide the FCC with a list of volunteers representing local governments. The list will be maintained at the FCC by the WTB. A list of volunteers representing wireless service providers will be selected and maintained by their national associations (CTIA, PCIA, and AMTA).

2. Best efforts will be exercised in attempting to select volunteers who reflect a range of experience with different forms and sizes of local government and wireless service providers. Efforts will be used to assign volunteers whose experience has been with similarly situated local governments to those at issue. After the individual's name is provided it will be moved to the bottom of the list, so as to create a procedure where volunteers do not have a disproportionate number of cases to review. Volunteers cannot mediate a dispute if they have a direct interest of any type in the geographic area under review.

3. If, for any reason, the volunteer[s] was [were] not able to review the issue at that time, the complainant may contact the WTB and obtain the next name [or names] on

the list. It is anticipated that the amount of time that will be spent by the volunteers reviewing and opining on these issues will be one to three hours per case.

4. The local government volunteer will review and listen to the local government's explanation of the issues. The wireless service provider volunteer will review and listen to the wireless service provider's explanation of the issues. If necessary, the volunteers will ask appropriate follow up questions, then will make appropriate contacts, as [they] he or she deems necessary. The volunteers will then discuss the issues as they understand them, and attempt to reach a mutually agreeable proposed course of action. The volunteer[s] will then contact each party individually, (the local government volunteer contacting the local government, and the wireless service provider volunteer contacting the wireless service provider) and will inform each party of his or her opinion as to whether the present activities comply with the moratoria guidelines, making recommendations as may be appropriate. The recommendation and mediation process by the volunteers should be concluded within 60 days.

5. Neither party is bound by the recommendations of the volunteer[s]. Should the complaining part[ies] be dissatisfied with the result, the part[ies] retain the option to bring legal action.

6. This process is intended as a mechanism to resolve issues short of court action, if possible. As a result, none of the discussions, statements, or information conveyed in the informal process, or even the fact that the informal process was undertaken, are subject to discovery, or admissible in a judicial or quasi judicial proceeding.

D. Upon agreement with LSGAC on the moratoria guidelines and informal dispute process described herein, CTIA will withdraw without prejudice its petition seeking preemption of zoning moratoria, docket number DA96 2140, FCC97 264.